

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4207 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

ROKADIYA MOSHINBHAI ABDULKARIM

Versus

DEPUTY COLLECTOR & STAMP DUTY VALUATION OFFICER

Appearance:

1. Special Civil Application No. 4207 of 2004
MR BB NAIK for Petitioner No. 1
MR PRADIP D BHATE, AGP for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the

appellate authority i.e. respondent no. 2 herein dated 07.1.2004 in dismissing the appeal preferred by the petitioner and confirming the order passed by respondent no. 1 dated 28.12.2001, by which respondent no. 1, in exercise of powers under Section 32-A of the Bombay Stamp Act, 1958 ('the Act' for short) determined the market value of the land in question at Rs.16,15,500/- and thereby directed the petitioner to pay the amount of Rs.1,93,984/- by way of deficit stamp duty along with Rs.250/- by way of penalty.

#. The land in question came to be purchased by the petitioner by registered sale deed dated 07.05.1999 and the same was presented before the sub-registrar, Bayad on the same day. It is the case of the petitioner that considering the potentiality, location and situation of the land, valuation of the property in question was considered at Rs.1,00,000/- and accordingly the stamp duty of Rs.12,800/- was used. As the Sub-Registrar, Bayad was of the opinion that it is not correct market value, he made reference to respondent no. 1 for determining the market value under Section 32-A of the Act. Notice under Rule 4(2) of the Market Value Rules, 1984 ('the Rules' for short) came to be issued upon the petitioner on 26.04.2001 and provisional market value of the land in question was determined by respondent no. 1 at Rs.23,17,800/- and the petitioner was directed to produce necessary evidence with regard to the correct market value. The petitioner filed detailed reply pointing out the potentiality, location and situation of the land and requested that looking to the same valuation of Rs.1,00,000/- is proper.

#. Respondent no. 1, considering the submissions made at the time of hearing as well as written statement, determined the market value of the land in question at Rs.16,15,500/- instead of Rs.23,17,800/- provisionally determined by him while issuing the notice under Rule 4 of the Rules and thereby directed the petitioner to pay the amount of Rs.1,93,984/- being the deficit stamp duty and Rs.250/- by way of penalty, in all Rs.1,94,234/-. Being aggrieved and dissatisfied with the order passed by the respondent no. 1 Dy. Collector Stamp Duty Valuation, Sabarkantha at Himatnagar dated 28.12.2001, the petitioner preferred the appeal before respondent no. 2 which came to be dismissed by the appellate authority. Hence, the present petition under Article 226/227 of the Constitution of India.

#. Mr.B.B.Naik, learned advocate appearing for the petitioner, has submitted that valuation which is fixed

by respondent no. 1 at Rs.16,15,500/- is without any basis and has arbitrarily fixed. He submitted that while fixing the market value at Rs.16,15,500/-, respondent no. 1 has not properly appreciated and considered the location of the land in question as well as the potentiality of the land and though there is no possibility of using the said land as quarry land, the said land has been treated as quarry land and the order has been passed. He relied upon the panchanama which was drawn by respondent no. 1 and relying upon the same, he submitted that valuation which is fixed at Rs.16,15,500/- is on higher side and not proper.

#. In response to the notice and on the rule being served, Mr. Bhate, learned A.G.P. appeared on behalf of the respondents. Initially, affidavit-in-reply was filed but in pursuance of the order passed by this court dated 02.11.2004, additional affidavit-in-reply is filed justifying fixation of the market value at Rs.16,15,500/-. It seems that considering the panchanama and jantri with regard to the land in the nearby area, the market value of the land in question is fixed at Rs.16,15,500/- and therefore it is requested to dismiss the present petition.

#. Heard the learned counsel for the parties.

#. It is an admitted position now that while determining the market value at Rs.16,15,500/- respondent no. 1 has relied upon the jantri behind the back of the petitioner. The petitioner is not given any opportunity to meet with the price which is fixed in the jantri and without giving any opportunity and without informing the petitioner, respondent no. 1 has relied upon the jantri and the impugned order has been passed. Thus, the impugned order can be said to be in violation of principles of natural justice. Even from the additional affidavit-in-reply, it appears that respondent no. 1 has considered potentiality of the land as quarry land and from the panchanama, learned advocate for the petitioner has tried to point out that the said land cannot be considered to be quarry land at all. This aspect has also not been considered by respondent no. 1 while passing the impugned order. Under the circumstances, impugned order passed by respondent no. 1 and confirmed by respondent no. 2 are required to be quashed and set aside and the matter is required to be remanded to respondent no. 1 for passing afresh order on its own merits and in accordance with law after giving opportunity to the petitioner and submitting all necessary documents which are to be relied upon by respondent no. 1 while passing

the original order and after following due procedure as required under Rule 4(2) and Rule 8 of the Rules.

#. For the reasons stated above, impugned orders dated 07.01.2004 and 28.12.2001 are quashed and set aside. The matter is remanded to respondent no. 1 for passing afresh order on its own merits and in accordance with law after giving opportunity and supplying all necessary documents which are to be relied upon by him while passing the final order and determining the market price. It will be open for the petitioner to contend before respondent no. 1 with regard to potentiality of the land in question and shall point out as to whether the said land can be used as quarry land or not and the same may be considered by respondent no. 1 while passing the final order. The amount which is deposited by the petitioner under the appellate order shall be retained with respondent no. 1 and will be adjusted subject to the outcome of the proceedings.

#. In view of the above, petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah, J)

(pathan)